

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

APR 15 2016

Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

CHRISTOPHER MICHAEL EMTER,

Defendant/Movant.

Cause No. CR 14-89-BLG-SPW
CV 16-42-BLG-SPW

ORDER DISMISSING § 2255
MOTION AND DENYING
CERTIFICATE OF APPEALABILITY

On April 14, 2016, Defendant/Movant Christopher Michael Emter filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255.

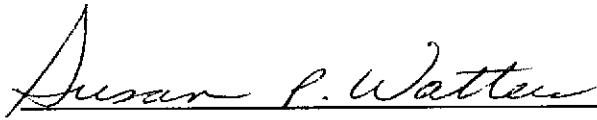
Emter's appeal is pending in the Ninth Circuit Court of Appeals. *See United States v. Emter*, No. 15-30364 (9th Cir. filed Dec. 4, 2015). "[F]ederal prisoners must exhaust appellate review prior to filing for habeas relief in the district court." *United States v. LaFromboise*, 427 F.3d 680, 686 (9th Cir. 2005) (citing *United States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997); *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987)). For all practical purposes, a § 2255 motion is the equivalent of a petition for writ of habeas corpus. *LaFromboise*, 427 F.3d at 686; *United States v. Hayman*, 342 U.S. 205, 210-19 (1952). This Court, therefore, will not entertain a § 2255 motion until Emter's conviction is final. *See Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987).

This law is well-settled. A certificate of appealability is not warranted. *Gonzalez v. Thaler*, ___ U.S. ___, 132 S. Ct. 641, 648 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Emter's § 2255 motion (Doc. 182) is DISMISSED as premature. No action will be taken on it.
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Emter files a Notice of Appeal of this Order.
3. The Clerk of Court shall ensure that all pending motions in this case and in CV 16-42-BLG-SPW are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 15th day of April, 2016.



Susan P. Watters
United States District Court